

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**GREGORY DIEHL,**

**Plaintiff,**

**v.**

**No.**

**UNITED STATES OF AMERICA,**

**Defendant.**

**COMPLAINT FOR PERSONAL INJURY AND DAMAGES  
RESULTING FROM THE NEGLIGENT OPERATION OF A MOTOR VEHICLE**

**COMES NOW** Plaintiff, Gregory Diehl, by and through his counsel of records, the REVO / SMITH LAW FIRM, LLC (Roger I. Smith, Esq.), and for his Complaint against the Defendant, United States of America, states as follows:

**INTRODUCTION**

This is a Federal Tort Claim lawsuit against the United States of America for damages suffered by Plaintiff Gregory Diehl as a result of the negligent and injurious actions and conduct of Guillermo Orquiz, an employee of the United States Department of Agriculture.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action against the United States of America pursuant to 28 U.S.C. §1346(b), 28 U.S.C. §§ 2671-2680, commonly known as the Federal Tort Claims Act (FTCA), which vests exclusive subject matter jurisdiction over such tort claims in Federal District Court.

2. This Court has jurisdiction over the parties.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(1) and/or 1391(b)(2), as well as 28 U.S.C. § 1391(e)(1) and (2), due to the United States of America is a Defendant and Guillermo Orquiz resides in the District of New Mexico, and the negligence and resulting motor vehicle crash occurred in the District of New Mexico.

### **PARTIES**

4. Plaintiff, Gregory Diehl (“Plaintiff”), is an individual and resident of Bernalillo County, New Mexico.

5. At all relevant times, Defendant, United States of America (“Defendant USA”), acted through its agency, the United States Department of Agriculture, and its employee, Guillermo Orquiz (“Orquiz”).

6. At all relevant times, Orquiz was and is an individual residing in Bernalillo County, New Mexico. Plaintiff is informed and believes, and herein alleges that Orquiz was, at all times herein relevant, the driver, operator, controller, and owner of a 2007 Toyota FJ Cruiser on or about August 3, 2012, and that Orquiz was acting within the scope of his employment by the United States Department of Agriculture.

### **GENERAL ALLEGATIONS FACTS COMMON TO ALL COUNTS**

7. On August 3, 2012, the Plaintiff was traveling northbound on Interstate 25 (I-25) approaching Jefferson Street when Plaintiff was struck from behind by a vehicle driven by Orquiz.

8. Orquiz was traveling northbound on I-25, within the scope of his employment by the United States Department of Agriculture, when he failed to stop for traffic and struck Plaintiff’s vehicle from behind causing Plaintiff’s damages.

9. The cause of the crash was Orquiz's driving while distracted, failure to stop, as well as other acts of negligence.

10. Both vehicles incurred damage.

11. As a direct result of the crash and Defendant's negligence, Plaintiff sustained personal injuries and other damages as further set forth herein.

12. The crash caused a significant injury to Plaintiff.

13. Because of his injuries from this occurrence, Plaintiff obtained medical treatment for his injuries incurring reasonable and necessary medical expenses for that treatment.

### **COUNT I-NEGLIGENCE**

14. Plaintiffs incorporate by reference each and every prior and subsequent allegation as though fully set forth herein.

15. Orquiz, acting on behalf of Defendant USA, had a duty of ordinary care to a person such as Plaintiff to drive in a safe manner.

16. Orquiz breached his duty by driving while distracted, failing to pay attention to traffic; failing to stop for traffic, failing to keep a proper lookout, and following too closely to the car belonging to the Plaintiff, and failing to stop in order to avoid the collision. The foregoing conduct constitutes negligence.

17. As a direct and proximate cause of Orquiz's negligent acts and omissions, as set forth herein, Plaintiff suffered bodily injuries and damages in an amount to be determined at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Gregory Diehl prays for judgment against Defendant United States of America on all causes of action as follows:

1. For general damages according to proof;
2. For special damages according to proof;
3. For personal property damages according to proof;
4. For pre-judgment and post-judgment interest as allowed by law;
5. For costs of suit incurred herein; and
6. For such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all counts.

Respectfully submitted,

**REVO / SMITH LAW FIRM, LLC**

/s/ Roger I. Smith \_\_\_\_\_.  
ROGER I. SMITH  
Attorney for Plaintiff  
10400 Academy Road, NE  
Suite 200  
Albuquerque, NM 87111  
PH: 505-293-8888  
FAX: 505-323-1159  
Email: [rsmith@revosmithlaw.com](mailto:rsmith@revosmithlaw.com)